title or property which the dealer has *must be conferred on him by some words or act of the true owner.* In other words the true owner must do something so as to be estopped. *Pickering* v. *Busk,* 15 East. 38; *Smith* v. *Clews,* 105 N. Y. 283; see also *McNeil* v. *Tenth National,* supra; *Commercial Bank* v. *Kortright,* 22 Wend. 348; *Wood's Appeal,* 92 Pa. St. 379; *Calais Steamboat Co.* v. *Van Pelt,* 2 Black (67 U. S.) 372; *Nixon* v. *Brown,* 57 N. H. 34.

SALES—STOPPAGE IN TRANSITU.—Claimant sold goods to X, who later became insolvent. Under the terms of the sale, the vendor sent the goods to a bleachery for and on account of the vendee. The bleachery received the goods as the goods of the vendee, so entered them upon the books, bleached and finished the goods according to the directions of the vendee, held them subject to vendee's orders and shipped out some of the goods upon the vendee's order. The goods were bleached at the cost of vendee. *Held,* this was not such a delivery to vendee as to prevent the right to stop in transitu. *In Re Poe Mfg. Co.* (S. C. 1913), 80 S. E. 194.

This case makes an extreme construction in favor of the right of stoppage in transitu. Relying among among other cases on *Harris* v. *Pratt,* 17 N. Y. 249 and *Callahan* v. *Babcock,* 21 O. St. 281, the court said "It is not material whether the person in whose possession the goods are when the seller interposes his claim, be a carrier, a warehouseman, a wharfinger, packet or other depository or an agent for forwarding purposes, nor by which of the parties to the sale he was employed." This no doubt is true, when it is applied to a *forwarding* agent—and upon examination of the authorities upon which the principal case is founded it will be found that the place of stoppage was a steamboat, depot or warehouse connected with and ordinarily employed in the *forwarding* business—*Atkins* v. *Colby,* 20 N. H. 154; *Callahan* v. *Babcock,* 21 O. St. 281; *Mohr* v. *Boston Ry. Co.,* 106 Mass. 67. The true test to be applied is "Has the person who has custody of the goods, got possession as agent *to forward* from the vendor to the buyer, or as agent *to hold* for the buyer?" BENJAMIN, SALES, § 846; *Leeds* v. *Wright,* 3 B. & P. 320; *Scott* v. *Pettit,* 3 B. & P. 469; *Hoover* v. *Tibbits,* 13 Wis. 79. Applying this test to the principal case, the decision is clearly erroneous.

WILLS—CONSTRUCTION—DISTRIBUTION PER STIRPES OR PER CAPITA.—One item of the will in question was as follows: "I will and devise that at the death of my wife all of my said real estate shall be divided, share and share alike, between the nearest blood relation I may have living at that time and the nearest blood relation of my wife at the time of her death." This action is between the testator's sister and brothers, appellants, who contend that the distribution under the will should be per capita, and the widow's father, appellee, who contends that the distribution should be per stirpes. *Held,* that the distribution should be per stirpes. *Laisure* v. *Richards* (Ind. App. 1913), 103 N. E. 679.

The appellants in this case, attaching importance to the use of the words "share and share alike," insisted that the testator intended a per capita distribution among one class only, viz.,—"nearest relation both by blood and by

marriage," instead of a per stirpes distribution between two classes, viz.,—"nearest relation of testator and nearest relation of testator's widow." There are a number of decisions which afford a ground for this argument. *Everitt* v. *Everitt,* 29 N. Y. 39; *Stevenson* v. *Lesley,* 70 N. Y. 512; *Howell* v. *Knight,* 100 N. C. 254; *Dukes* v. *Faulk,* 37 S. C. 255, 34 Am. St. Rep. 745; *Kling* v. *Schnellbecker,* 107 Ia. 636; *Campbell* v. *Clark,* 64 N. H. 328, 10 Atl. 702; *Budd* v. *Haines,* 52 N. J. Eq. 488. On the other hand there are cases which are just as nearly in point as the ones above cited, which adopt the contrary view. *Young's Appeal,* 83 Penn. 59; *Bassett* v. *Granger,* 100 Mass. 348; *Ross' Ex'r* v. *Kiger,* 42 W. Va. 402; *In re Swinburne,* 16 R. I. 208; *Raymond* v. *Hillhouse,* 45 Conn. 467; *Rivenett* v. *Borquin,* 53 Mich. 10; *Records* v. *Field,* 155 Mo. 314, 55 S. W. 1021; *McLear* v. *Williams,* 116 Ga. 257. The cardinal rule to be followed in construing a will is to ascertain the testator's intention as gathered from all the language used, *Wood* v. *Ballard,* 151 Mass. 324, and doubtless these two conflicting views are to some degree reconcilable if we take into consideration the fact that the courts, in arriving at their decision in each particular case, did so in an effort to carry out the testator's intention as evinced by the whole will, instead of confining their scrutiny to any particular item. For further consideration of this question see note following *In re King's Estate,* 34 L. R. A. N. S. 945, 21 Ann. Cas. 412.

WILLS—NO UNDUE INFLUENCE BY CHILD TWELVE YEARS OLD.—In a will contest, it was alleged that undue influence had been exerted on the testator. On this point the court *held* as follows: "It will be seen that at the date of the execution of the will in question the contestee was but little past twelve years of age and therefore was not chargeable with the exercise of undue influence over his father." *Purdy's Adm'r* v. *Evans* (Ky. 1913), 160 S. W. 1071.

With this dogmatic statement the court dismissed the claim that the son had exercised undue influence over his father. The doctrine appears to be without authority. Its nearest parallel is the ancient rule of the common law that no party could testify who was under nine years of age. *Rex* v. *Traverse,* 1 Str. 700. But this has long been repudiated. "No rule defines any particular age as conclusive of incapacity," WIGMORE, EVIDENCE, 505. There is no precise or fixed rule as to the time within which infants are excluded from giving evidence; but their admissibility is to be collected from their answers to questions propounded by the court. *Rex* v. *Brazier,* 1 Leach Cr. L. 237. All modern decisions seem to declare intelligence and not age the proper test. *State* v. *King,* 117 Ia. 848, 91 N. W. 768. The holding of the court receives no support from the law of torts since infants of tender years are liable for their torts. *Huchting* v. *Engel,* 17 Wis. 230, 84 Am. Dec. 741; nor from the law of crimes since the common law rule is that between the ages of seven and fourteen an infant is presumed incapable of committing a crime but the contrary may be shown. *Allen* v. *U. S.,* 150 U. S. 551; nor from the law of contracts since the general rule is that the contracts of an infant are voidable. *Lansing* v. *Mich. Central R. Co.,* 126 Mich. 663.